

CENTRAL BANK OF INDIA

A

v.

M/S. MADAN LAL AND BROTHERS AND ORS.

NOVEMBER 1, 1995

[K. RAMASWAMY AND KIRPAL, JJ.]

B

*Civil Procedure Code, 1908 :*

*Section 51—Decree in execution—Satisfaction of—Sale of hypothecated property to realise decretal debt—In case of shortfall to proceed against any other asset or personally against any other defendant—Directions issued.*

C

In this appeal by the appellant-Bank against the High Court's judgment, the respondents contended that the hypothecated property may be assessed at its market value as on date and may be put to execution; and that in case the property was not sufficient, proceedings may be taken for recovery of the balance dues in accordance with law.

D

Disposing of the appeal, this Court

**HELD :** The appellant is at liberty, in the first instance, to proceed with the sale of the aforesaid property and realise the decretal debt from the sale proceeds and to have the same satisfied with the decree in execution. In case there is any shortfall, it would be open to the appellants to proceed against any other assets or personally against any other defendants in accordance with law. If sale proceeds are in excess, it is needless to mention that the amount in excess of the decretal amount would be paid over to the respondents. [700-E]

E

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10022 of 1995.

From the Judgment and Order dated 20.7.90 of the Punjab & Haryana High Court in C.R. No. 185 of 1990.

G

Rishi Kesh, for the Appellant.

Dr. Sumant Bhardwaj and Ms. Mridula Ray Bhardwaj for the Respondents.

H

A The following Order of the Court was delivered :

It is stated that respondents 5-7 are the legal representatives of respondent No. 4. Therefore, the need to substitute them is obviated. They would represent the estate of the deceased-4th respondent.

B Leave granted.

C We have heard the counsel on both sides. In all fairness, the counsel for the respondents had stated that hypotheca, namely, the factory premises situated at G.T. Road, Phagwara, ground floor marked as A, B, C, D, E, F, G, H, and I together with all structure existing thereon, with all the shade, Kothas, boundary walls etc. etc. as mentioned in the Schedule to the plaint be assessed at its market value as on date and may be put to execution. The amount realised out of sale thereof would be credited to the account of decree in question. In case the property is not sufficient, then it would be open to the respondents to proceed for the recovery of the dues by proceeding against other orders or proceedings accordance with law. We appreciate the fair stand taken by the learned counsel for the respondents. Accordingly, the appellant is at liberty, in the first instance, to proceed with the sale of the aforesaid property and realise the decretal debt from the sale proceeds and to have the same satisfied with the decree in execution. In case there is any shortfall, it would be open to the appellants to proceed against any other assets or personally against any other defendants in accordance with law. If sale proceeds are in excess, it is needless to mention that the amount in excess of the decretal amount would be paid over to the respondents .

F The appeal is accordingly disposed of. No costs.

G.N.

Appeal disposed of.